

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATIONS Nos. 4297,4341, 4559, 4560,  
4563, 4689, 4716 and 4835 of 1999

For Approval and Signature:

Hon'ble MR.JUSTICE M.R.CALLA

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1. Whether Reporters of Local Papers may be allowed : YES  
to see the judgements?
2. To be referred to the Reporter or not? : YES
3. Whether Their Lordships wish to see the fair copy : NO  
of the judgement?
4. Whether this case involves a substantial question : NO  
of law as to the interpretation of the Constitution  
of India, 1950 of any Order made thereunder?
5. Whether it is to be circulated to the Civil Judge? : NO

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ASWATH KUMAR R

Versus

STATE OF GUJARAT

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Appearance:

MR KH BAXI for Petitioners  
Mr.P.B.Bhatt, learned A.G.P. for the  
respondents Nos.1 to 3.

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CORAM : MR.JUSTICE M.R.CALLA

Date of decision: 22/07/1999

COMMON ORAL JUDGEMENT

1. All these eight Special Civil Applications are  
based on identical facts and involve common question of  
law and, therefore, I propose to decide all these Special  
Civil Applications by this common judgment and order.
2. The petitioners herein are Medical Graduates  
seeking admission in Post Graduate courses (herein after

referred to as "P.G. Course') in Medical Faculty in different disciplines in the Medical Colleges in the State of Gujarat on the basis of All India Entrance Examination against 25 percent of the seats in P.G. Course. They seek to challenge the Government Resolution dt.16.5.96 issued by the Health & Family Welfare Department being Resolution No.MCG-1096-1418-J. The grievance is raised by the petitioners against this Government Resolution dt.16.5.96 in the context of the earlier Government Resolution dt.7.10.93 issued by the Health & Family Welfare Department of the Government of Gujarat being Resolution No.MCG-1093-452-J. Learned counsel for the petitioners has pointed out that in terms of this Resolution dt.7.10.93, bonds were being taken by the Government of Gujarat for providing services in rural areas in the State for a minimum period of two years in the public interest and for the purpose of providing proper medical facility. For breach of such bond, certain amount was to be recovered. The duration and amount was determined from time to time. In the very same Government Resolution dt.7.10.93 it was provided at Item No.15 thereof that bond shall not be taken from those students who have got admission for the study of P.G.course after passing All India Entrance Examination or who have been appointed in Residency and in the same way bond shall not be taken from those students who have got admission, for study of P.G.course after completion of graduation in M.B.B.S./ B.D.S. under 15% quota and it was resolved to give exemption from bond to them. Now in terms of the Government Resolution dated 16.5.96, it has been resolved to take/demand bond for rural service from those students also, who are getting admission in the State Medical/Dental Colleges in the study of graduation or post graduation on the basis of All India Entrance Examination. The operative part of this Resolution is reproduced as under:-

"RESOLUTION:-

Therefore,, after due consideration it is determined to take/demand bond for rural service from those students who are getting admission in State Medical/Dental Colleges in the study of Graduate/ or Post Graduate on the basis of All India Entrance Exam, as mentioned hereunder :

- (1) Now students who are getting admission for Graduate or post Graduate Medical/Dental study in the State Medical/Dental Colleges on the basis of All Indian Entrance Exam, shall give bond to the effect that they will serve in rural area for three years including one year service in tribal

area after completion of study, failing which they will pay Rs.75,000/- (rupees Seventy Five Thousand Only) to the Government.

- (2) If required, with a view that difficulty may not arise in recovery of bond from such students, they shall give surety of a person who has stayed in Gujarat in the bond given by them as above, or in the alternative Bank Guarantee of Rs.75,000/- shall be given.
- (3) For joining the service of State Government, application shall be submitted by Regd. A.D. within stipulated time after completion of Graduate/Post Graduate study. Failing which procedure will be started for recovery of bond.
- (4) Present general directions/orders of the State Government about bond and amendments being made from time to time shall also apply to the case of these students.
- (5) Directions about not to take bond from Medical/Dental students who are getting admission on the basis of All India Entrance Exam, contained in this department's resolution dtd.3.7.93 and dt.27.7.93 are hereby quashed.
- (6) These directions shall be implemented/ observed with immediate effect.

By the order of Governor of Gujarat and in his name.

Sd/-  
(P.M.Asari)  
Deputy Secretary,  
Health & Family Welfare Deptt.

3. The learned counsel for the petitioners has submitted that the requirement of taking such a bond is unreasonable and discriminatory and further that for the students coming from other States, on the basis of All Indian Entrance Test, it may not be possible to get surety of a person, who has stayed in Gujarat nor it is possible for him to get the solvency of the surety belonging to any other State to be verified from the authority in the State of Gujarat. Rule was issued in these cases and ad interim orders were passed directing that the requirement of the execution of the bond/bank

guarantee in terms of the Government Resolution dt.16.5.96 shall not be insisted upon against the petitioners and they shall be allowed to prosecute their courses in case they are otherwise selected. So far no return has been filed on behalf of the respondents despite opportunities more than one.

4. I have heard learned counsel for the petitioners and have gone through the Government Resolutions dated 7.10.93 and 16.5.96 as also the prescribed Form in which the Bond is required to be executed.

5. I do not find any force in the argument of the learned counsel for the petitioners that admission in the P.G.course in the State was completed on 31.3.99 in terms of the Memorandum dt.15.3.99 and, therefore, the requirement of execution of bond worth Rs.75,000/- for completion of the tenure of three years service (2 years in rural area and 1 year in tribal area) as conveyed by letter dt.21.4.99 could not be pressed against the petitioners because the process of admission was over on 15.3.99. The letter dt.15.3.99 was only a letter by which the candidates were informed about their selection for the course and the date of 31.3.99 was mentioned to be the date by which the candidates must have completed their internship. The interviews for the post of respective Unit and teachers were to be held on 21.6.99 in the office of the Director of Post Graduate Studies and Research and, therefore, in the letter dt.21.4.99 condition No.5 could be included and I do not find that the Director could not have conveyed that in case the documents, as mentioned in this letter dt.21.4.99, are not produced the admission will be cancelled. The inclusion of the condition at item No.5 i.e. "Agreement bond worth Rs.75000/- for completion of your tenure and 3 years service, 2 year in rural and one year in tribal area)" was justified and it cannot be said that this condition could not be imposed against the admission which were finalised earlier. I do not agree that the condition, as aforesaid, could not be imposed on 21.4.99 subsequent to the intimation of selection.

6. So far as Government Resolution dt.16.5.96 is concerned, the contents of this Government Resolution show that such Resolution for taking the bonds from the candidates joining P.G.Course in the State of Gujarat coming from other States on the basis of the All India Entrance Examination, was taken for the reason that for number of students getting admission in Medical/Dental Colleges in the State of Gujarat through such All India Entrance Examination, Rs.1.5 lacs was being spent and the

State Government was bearing Rs.95,800/- per such student towards stipend being paid and yet it could not be possible for the State to ensure their services in absence of the bond as was being taken from the other candidates, who belong to this State itself. The State of Gujarat, therefore, determined to take bond for rural service also from students, who are getting admission in Medical/Dental Colleges on the basis of All India Entrance Examination and accordingly students coming from other States were also subjected to the requirement of executing this bond. The Government has also considered the question of recovery of the bond amount from them in case of necessity and it was in the light of this reasoning contained in the Government Resolution dt.16.5.96 itself that the decision, as reproduced above, was taken. In the background, in which this Resolution dt.16.5.96 has been passed superseding the earlier Resolutions, I find that the requirement of taking such a bond from the candidates like the petitioners cannot be said to be unreasonable or discriminatory in any manner whatsoever. All India Entrance Examination is for the purpose of giving them opportunity for the P.G.Course in different disciplines because all the seats in such Colleges in a State cannot be kept confined to the candidates of the particular State only and, therefore, as laid down by the Supreme Court, certain quota has been fixed for competition at all India level. Once a candidate joins a particular course in a particular State on the basis of All Indian Entrance Examination, which is only a mode for admission, he has to abide by the conditions which are laid down by the State Government in which State he seeks to study and he has to be treated at par with the other students of that State. If the Medical Graduates, who belong to Gujarat, are required to execute such a bond, exception cannot be made in case of candidates like the petitioners, merely because they have sought admission on the basis of All India Entrance Examination. There is one more reason for this Court to take this view and the same is that such students do not execute any such bond in their own State also and they are also not willing to execute such a bond in the State where they study the P.G.Course and, therefore, such students avoid the requirement of rendering medical services in rural/tribal areas in the State to which they belong and the State where they come for the study. In any case the State which spends on their education is justified to ensure that they also serve the rural/tribal areas of the State for certain minimum period. In this context the challenge thrown by the petitioner to the requirement of the execution of the bond, as required under the Government Resolution dt.16.5.96, cannot be

sustained and the same is hereby rejected.

7. The learned counsel for the petitioners has submitted that in case of the breach of the condition of such a bond, such candidates are also required to give surety of a person, who has stayed in Gujarat and the surety bond also refers to the solvency of the surety to be certified by the Collector/Deputy Collector/Mamlatdar. So far as the requirement of the surety in case of the breach of the condition of bond is concerned, I do not find that there is anything wrong in the requirement of surety as such. However, I find that the condition that the surety should be of a person, who has stayed in Gujarat and that his solvency must be certified by the Collector/Deputy Collector/Mamlatdar in the State of Gujarat itself cannot be said to be reasonable. It will be a totally fortuitous circumstance for any candidate coming for Post Graduate studies in the State of Gujarat to know or not to know a solvent person, who has stayed in Gujarat and who is ready to stand surety for him. If such a fortituous circumstance is allowed to prevail, a candidate who has passed the All India Entrance Examination with lesser marks but knows a person, who has stayed in Gujarat and who is ready to stand surety for him and who is solvent enough to the satisfaction of the authority who has to certify the solvency, may avail admission in the P.G.Course while a candidate, who may have a higher merit in the All India Entrance Examination but does not know any such person in the State of Gujarat, who has stayed in Gujarat and who is solvent enough for the purpose of such surety, will not be able to avail such an admission. Such a position cannot be countenanced so as to render the higher merit to be a casualty at the altar of a fortuitous circumstance. It is, therefore, a totally fortuitous circumstance and it is not necessary that every candidate coming from All India Entrance Examination for prosecuting P.G.Course has a person readily available to give such a surety for him. The learned A.G.P. has pointed out that this requirement has been prescribed so as to make the recovery possible as the recovery from any person as a surety from other State would be cumbersome and he has also submitted that in the alternative the option has also been given for a bank guarantee of Rs.75,000/- and, therefore, this condition is not unreasonable. It goes without saying that the alternative of Bank guarantee of Rs.75,000/- is equally unreasonable. The opportunity is to prosecute higher course of studies for which the selections are made on the basis of the merit. The merit at all India Entrance Examination, cannot be made to be defeasible on the ground of financial position of such a student. The

Bank guarantee is not possible unless cash amount of Rs.75,000/- is readily available with such a candidate and it is not necessary that the candidate, who has stood in merit in the All India Entrance Examination would necessarily be in position to deposit ready cash of Rs.75,000/- or that he must know a person who has stayed in Gujarat to stand surety for him. If at all in case of breach, the recovery is to be made, such recovery may be effected through any surety who belongs to other State and for that purpose even if the State Government is put to some inconvenience in the matter of effecting recovery, such inconveniences will have to be tolerated, if at all we mean that the merit should prevail and that it should not be sacrificed either at the altar of monetary considerations or at the altar of the other fortuitous circumstances. Chill penury of meritorious candidates cannot be allowed to leave an adverse indelible imprint on their career.

8. For the forgoing reasons, this Court finds the requirement of surety of a person, who had stayed in Gujarat, the requirement of solvency being certified by the Collector/Deputy Collector/Mamlatdar within the State of Gujarat and the alternative condition of the Bank guarantee of Rs.75,000/- do not withstand the touch stone of reasonableness in the matters of this nature, which are matters of vital importance for the meritorious students, who seek to prosecute the higher course of study in the State other than their own State on the basis of an All India Examination against fixed and certain quota. In the facts and circumstances of this case, it will be sufficient if the petitioners and the candidates like the petitioners are required to execute the bond as a bond for the purpose of rendering the services in the State in rural and tribal areas for the prescribed period, and it will also be open to require them to give the surety for the recovery of the amount of Rs.75,000/- in case of the breach of such bond, but the respondents shall not insist that such surety must be of a person, who has stayed in Gujarat or that he must belong to Gujarat and it may be left open for such candidates to give surety even of a person, who is resident of any other State, subject to the condition that he produces the solvency Certificate of such a person (who stands surety) from Revenue Officers of such other State, to which he belongs and the alternative requirement of giving the bank guarantee of Rs.75,000/- shall also not be insisted upon. These conditions that the surety must belong to Gujarat or must have stayed in Gujarat and his solvency must be certified by an Officer of the Gujarat and that in alternative the

Bank guarantee of Rs.75,000/is to be given are declared to be unreasonable and discriminatory and are declared to be illegal and hence not to be insisted upon.

9. It is given out that all these petitioners have already joined the course without furnishing the bond/bank guarantee etc. as required by the Government Resolution dt.16.5.96 on the strength of the ad interim orders passed by this Court. It will, therefore, be open for the respondents to call upon the petitioners to furnish the bonds, as mentioned in the Government Resolution dt.16.5.96, but it will be left open for the petitioners to give surety of a person, who may or may not belong to State of Gujarat or who may or may not have stayed in the State of Gujarat and such person giving surety may also meet the requirement of his solvency by giving a solvency Certificate of any Revenue Officer of his own State to which he belongs and alternative requirement of giving bank guarantee of Rs.75,000/- shall also not be insisted upon. The petitioners shall be given one month's time for the purpose, as aforesaid, by the respondents and they will also be given facility of spare time from their studies/job/duty etc. for producing the same.

10. All these 8 Special Civil Applications are partly allowed in the terms, as above. The Rule is made absolute to the above extent only in all these petitions.No order as to costs.